

Congress of the United States

JOINT COMMITTEE ON TAXATION

Washington, DC 20515-6453

FEB 18 2009

Honorable Jim McDermott  
U.S. House of Representatives  
1035 Longworth House Office Building  
Washington, DC 20515

Dear Mr. McDermott:

This letter is in response to your request dated August 11, 2008, for revenue estimates of modifications to H.R. 6499, the "Sensible Estate Tax Act of 2008" (110<sup>th</sup> Congress). We have also provided a current estimate of H.R. 6499 utilizing the 2009 baseline.

Under present law, as included in Title V of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), the estate and gift taxes for decedents dying during 2009 include an estate tax exemption equivalent amount of \$3.5 million per estate, a lifetime gift tax exemption equivalent amount of \$1 million, and a top tax rate on estates and gifts of 45 percent. The estate and generation skipping transfer taxes are repealed for decedents dying during 2010, while the gift tax remains in place in 2010 with a \$1 million exemption equivalent amount and a 35 percent tax rate. Present law also contains a phase-out of the estate tax State death tax credit. For decedents dying after 2004 and before 2010, the State death tax credit is repealed, but the amount of the credit is allowable as a deduction against the total gross estate of the decedent. The State death tax credit is reinstated for decedents dying after 2010. In addition, subtitle F of Title V of EGTRRA modified section 2031 of the Internal Revenue Code (the "Code") pertaining to conservation easements; subtitle G of Title V of EGTRRA modified the generation skipping transfer tax rules; and subtitle H of Title V of EGTRRA modified section 6166 of the Code pertaining to the extension of time to pay estate taxes. After 2010, the estate tax, generation skipping transfer tax, and gift tax changes included in Title V of EGTRRA expire, and the estate, gift, and generation skipping transfer taxes revert to the law as scheduled to be in effect prior to its enactment. For decedents dying in 2011 and thereafter, the estate and gift taxes are unified with an estate and gift tax exemption equivalent amount of \$1 million and a top rate of 55 percent.

H.R. 6499 would modify and make permanent the estate, gift, and generation skipping transfer taxes, with an exemption amount of \$2 million per estate beginning in 2009. This amount is inflation adjusted for years after 2008<sup>1</sup>. There would be a tax rate of 45 percent for taxable values greater than \$2 million but not greater than \$5 million; 50 percent for taxable values greater than \$5 million but not greater than \$10 million; and 55 percent for taxable values in excess of \$10 million. The deduction for State death taxes is replaced with the credit for State death taxes paid, as in effect prior to EGTRRA. The bill would retain subtitles F, G, and H of

<sup>1</sup> As drafted, the bill provides for indexing of the exemption and rate bracket amounts in 2009, i.e., in the first year that the bill would be in effect.



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title V of EGTRRA. In addition, this proposal generally would allow a surviving spouse to include the unused portion of the first-to-die spouse's estate tax exemption amount in his or her estate tax exemption amount.

You have requested estimates of the Sensible Estate Tax Act of 2008 with and without unification of the estate and gift tax exemption equivalent amounts and with and without portability of the first-to-die spouse's unused exemption amount. Without unification of the estate and gift tax exemption equivalent amounts, the gift tax exemption equivalent amount would be \$1 million for all years.

In preparing these revenue estimates, we considered the possible behavioral responses of taxpayers under the proposal. We expect that the dollar amount of gifts made during 2010 would be significantly lower than the amount that is included in our baseline. Due to (1) the reduction in gift tax rates in 2010 to 35 percent from 45 percent in 2009, followed by an increase in gift tax rates to as much as 55 percent in 2011 and (2) the repeal of the generation skipping transfer tax for 2010, our baseline anticipates more than \$18 billion in gift taxes to be paid on gifts occurring in 2010. With permanent estate, gift, and generation skipping transfer taxes in 2010, we would anticipate a much lower level of taxable gifts during 2010. As a result, while there is no estate tax applicable to bequests made in 2010 under the baseline, there would be a substantial revenue loss associated with the proposed changes to the gift tax for that year. For this reason, the revenue estimate for the estate and gift portion of your proposal shows a decrease in revenue in fiscal year 2011 (when much of the gift taxes for gifts made in 2010 will be paid).

The bill and each of its variants would be effective for decedents dying and gifts made after December 31, 2008. We have assumed an enactment date of April 1, 2009.

This revenue estimate was prepared using our 2009 estimating models, which rely on the Congressional Budget Office's January 2009 macroeconomic forecast. The Congressional Budget Office plans to prepare a March revision to its baseline macroeconomic assumptions. If large-scale stimulus legislation is enacted early in 2009, the Congressional Budget Office's March 2009 revised macroeconomic forecasts could be expected to differ, perhaps significantly, from their January 2009 counterparts. In that case, we anticipate that we would revise our 2009 estimating models to reflect the Congressional Budget Office's March 2009 macroeconomic forecasts: revenue estimates prepared using these revised March 2009 macroeconomic inputs again could differ, perhaps materially, from revenue estimates of the same request using our 2009 models with January 2009 macroeconomic forecasts.

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We estimate your proposal would have the following effect on Federal fiscal year budget receipts:

Fiscal Years [Billions of Dollars]													
Item	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2009-14	2009-19
H.R. 6499.....	--	2.9	-0.5	-14.1	-16.4	-20.3	-24.4	-27.6	-30.9	-34.2	-37.4	-48.4	-202.8
H.R. 6499 without unification with Gift Tax.....	--	3.1	-0.3	-13.8	-16.0	-19.8	-23.9	-27.1	-30.4	-33.6	-36.8	-46.8	-198.6
H.R. 6499 without portability..	--	3.0	-0.4	-13.9	-16.1	-19.9	-23.8	-26.9	-30.1	-33.3	-36.4	-47.3	-197.8
H.R. 6499 without portability or unification.	--	3.1	-0.1	-13.6	-15.7	-19.4	-23.3	-26.4	-29.6	-32.7	-35.8	-45.8	-193.6

NOTE: Details may not add to totals due to rounding.

I hope this information is helpful to you. If we can be of further assistance in this matter, please let me know.

Sincerely,



Thomas A. Barthold  
Deputy Chief of Staff